



Commonwealth of Massachusetts State Ethics Commission

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CONFLICT OF INTEREST OPINION EC-COI-90-1

FACTS:

You currently serve as Tax Collector of ABC, having been appointed temporarily to that position by the Board of Selectmen to fill a vacancy. Prior to your appointment, the Board of Selectmen had appointed your mother as the Assistant Tax Collector. You have recently received guidelines concerning the application of G.L. c. 268A to you in your official dealings with your mother. You intend to run for election to fill the remainder of the unexpired term and wish to receive formal Commission guidance prior to the election.

QUESTION:

Does G.L. c. 268A allow you to serve as Tax Collector in the same department as your mother?

ANSWER:

Yes, subject to several conditions.

DISCUSSION

Section 19

As Tax Collector, you are considered a municipal employee for the purposes of G.L. c. 268A. Section 19 of G.L. c. 268A prohibits a municipal employee from officially participating¹ in any decision, contract, controversy or other particular matter² in which the employee's mother has a financial interest. By way of example, you must abstain from participating, either by recommending or approving, any personnel matter, evaluation, promotion, step raise, salary determination or other term or condition of employment in which your mother has a financial interest. See, In the Matter of Frederick Cronin, 1986 SEC 269. The prohibition also applies to your day-to-day supervision of your mother. See, {Commission Advisory No. 11}, Nepotism. The fact that the Board of Selectmen is authorized to sign and approve the payroll and negotiate contracts does not relieve you of obligations under s.19 because participation includes recommending as well as making a final decision. See, In the Matter of Peter Cassidy, 1988 SEC 371. You must therefore abstain from involvement, whether by recommendation or decision, in any matter in which your mother has a financial interest.

An exemption is available to you under s.19(b)(1) by which you may participate in matters affecting your mother's financial interest if you receive written permission from your appointing official, the Board of Selectmen, pursuant to the conditions spelled out in s.19(b)(1).³ Unless and until you receive such an exemption, however, you must continue to abstain from participating as Tax Collector in any matter affecting your mother's financial interest. This exemption would not be available to you once you were elected, however, since you will no longer have an appointing official. District Attorney for the Hampden District v. Grucci, 384 Mass. 525 (1981). Assuming you are elected, the Board of Selectmen may wish to consider steps to minimize any risk to your violating s.19. For example, the Selectmen could either delegate to another official the day-to-day supervision of your mother or could arrange a transfer of your mother to another municipal department. We are available to assist you and the Board of Selectmen in reviewing these options, if and when you are elected to that position.

Date Authorized: January 24, 1990

¹ "Participate," participate in agency action or in a particular matter personally and substantially as a state, county or municipal employee, through approval, disapproval, decision, recommendation, the rendering of advice, investigation or otherwise.

² "Particular matter," any judicial or other proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, decision, determination, finding, but excluding enactment of general legislation by the general court and petitions of cities, towns, counties and districts for special laws related to their governmental organizations, powers, duties, finances and property.

³ (b) Under G.L. c 268A, s.19(b) it shall not be a violation of this section

(l) if the municipal employee first advises the official responsible for appointment to his position of the nature and circumstances of the particular matter and makes full disclosure of such financial interest, and receives in advance a written determination made by that official that the interest is not so substantial as to be deemed likely to affect the integrity of the services which the municipality may expect from the employee.